

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM MURPHY,)	1:02-CV-05456-OWW-TAG-HC
Petitioner,)	
v.)	ORDER DENYING APPLICATION
)	FOR CERTIFICATE OF
ANA RAMIREZ PALMER,)	APPEALABILITY
)	(Doc. 33)
Respondent.)	

Petitioner is a state prisoner proceeding pro se in an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On October 21, 2005, the Magistrate Judge filed a Report and Recommendations which were served on all parties and which contained notice that any objections to the Report and Recommendations were to be filed within thirty days. (Doc. 28). Pursuant to an order granting him an extension of time, Petitioner timely filed his objections on November 28, 2005. (Doc. 30). On December 19, 2005, the Court entered an order adopting the Magistrate Judge's Report and Recommendations and denying Petitioner's application for a writ of habeas corpus. (Doc. 31). Judgment was also entered on December 19, 2005. (Doc. 32).

On February 3, 2006, Petitioner filed application for issuance of a certificate of appealability. (Doc. 33). The requirement that a petitioner seek a certificate of appealability is a gate-keeping

1 mechanism that protects the Court of Appeals from having to devote resources to frivolous issues,
 2 while at the same time affording petitioners an opportunity to persuade the Court that, through full
 3 briefing and argument, the potential merit of claims may appear. Lambright v. Stewart, 220 F.3d
 4 1022, 1025 (9th Cir. 2000). However, a state prisoner seeking a writ of habeas corpus has no
 5 absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed
 6 in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-336 (2003). The controlling
 7 statute, 28 U.S.C. § 2253, provides as follows:

- 8 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge,
 9 the final order shall be subject to review, on appeal, by the court of appeals for the circuit in
 10 which the proceeding is held.
 11 (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a
 12 warrant to remove to another district or place for commitment or trial a person charged with a
 13 criminal offense against the United States, or to test the validity of such person's detention
 14 pending removal proceedings.
 15 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not
 16 be taken to the court of appeals from--
 (A) the final order in a habeas corpus proceeding in which the detention
 complained of arises out of process issued by a State court; or
 (B) the final order in a proceeding under section 2255.
 17 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made
 18 a substantial showing of the denial of a constitutional right.
 19 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or
 20 issues satisfy the showing required by paragraph (2).

21 Accordingly, final orders issued by a federal district court in habeas corpus proceedings are
 22 reviewable by the circuit court of appeals, and, in order to have final orders reviewed, a petitioner
 23 must obtain a certificate of appealability. 28 U.S.C. § 2253. This Court will issue a certificate of
 24 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
 25 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
 been resolved in a different manner or that the issues presented were ‘adequate to deserve
 encouragement to proceed further’.” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (*quoting*
Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

26 In the present case, the Court finds that Petitioner has not made the required substantial
 27 showing of the denial of a constitutional right to justify the issuance of a certificate of appealability.
 28 Reasonable jurists would not find it debatable that Petitioner has not shown an entitlement to federal

1 habeas corpus relief. Accordingly, the Court hereby ORDERS that Petitioner's application for a
2 certificate of appealability (Doc. 33), is DENIED.

3 IT IS SO ORDERED.

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8 IT IS SO ORDERED.

9 **Dated: March 9, 2006**
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/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE